



POSTAL REGULATORY COMMISSION

39 CFR Part 3055

[Docket No. RM2022-7; Order No. 6160]

RIN 3211-AA32

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is proposing revisions to existing annual and periodic service performance reporting requirements for the Postal Service's market dominant products as well as related revisions consistent with the Postal Service Reform Act of 2022. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 3, 2022. *Reply comments are due:* June 24, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission initiates this rulemaking to consider revisions to update the existing annual and periodic service performance reporting requirements for the Postal Service's Market Dominant products, which are codified in 39 CFR part 3055, subparts A and B, as well as related revisions consistent with the Postal Service Reform Act of 2022 (PSRA).¹ The Commission hereby seeks comments to facilitate the Commission's examination of these reporting requirements.

II. Background

The Postal Accountability and Enhancement Act (PAEA) granted the Commission enhanced information gathering and reporting responsibilities. See 39 U.S.C. 3652(e)(1). The PAEA provides that the Commission shall prescribe the content and form of the public reports that the Postal Service files with the Commission under section 3652. *Id.* In doing so, the Commission must attempt to provide the public with timely information that is adequate to allow it to assess the lawfulness of Postal Service rates, should attempt to avoid unnecessary or unwarranted Postal Service effort and expense, and must endeavor to protect the confidentiality of commercially sensitive information. See *id.* The Commission may initiate proceedings to improve the quality, accuracy, or completeness of Postal Service reporting whenever it determines that the service performance data have become significantly inadequate, could be significantly improved, or otherwise require revision as necessitated by the public interest. 39 U.S.C. 3652(e)(2).

¹ See Postal Service Reform Act of 2022, H.R. 3076, 117th Cong. (2022).

In Docket No. RM2009-11, the Commission issued its initial periodic reporting requirements of service performance measurements under the PAEA.² Since then, there have been a number of relevant modifications to those requirements as well as the systems used to measure service performance generally.³ Moreover, in FY 2019 and again in FY 2021, service performance reporting for many products that had previously been measured using external methods began to use the Postal Service's internal service performance measurement system.⁴

There have also been several significant changes to relevant service standards. Most recently, in FY 2021 the Postal Service modified its service standards for First-Class Mail and end-to-end Periodicals.⁵ Subsequently, the

² Docket No. RM2009-11, Order Establishing Final Rules Concerning Periodic Reporting of Service Performance Measurements and Customer Satisfaction, May 25, 2010 (Order No. 465).

³ See Docket No. PI2015-1, Order Approving Use of Internal Measurements Systems, July 5, 2018, at 13 n.31 (Order No. 4697); Docket No. PI2015-1, Errata to Order No. 4697, August 21, 2018 (Order No. 4771); see also Docket No. PI2022-3, United States Postal Service Notice of Filing Changes to Service Performance Measurement Plan Document, April 22, 2022, at 1 (describing changes to the service performance measurement plan pending before the Commission, including a revision to how "Start-the-Clock" events are measured, the addition of Reply Mail in the Single-Piece First-Class Letters/Cards/Flats category, and a revision to the critical entry time for Periodicals); United States Postal Service, Office of Inspector General, Report No. CRR-AR-11-003, Service Performance Measurement Data – Commercial Mail, September 6, 2011, at 2-3, 13, available at <https://www.uspsaig.gov/sites/default/files/document-library-files/2015/CRR-AR-11-003.pdf> (determining that the process used to obtain service performance scores for commercial mail was "not effective" due to "significant data quantity, accuracy, and reliability issues," based on an interim audit conducted from November 2010 through September 2011); United States Postal Service, Office of Inspector General, Report No. CRR-AR-12-005, Service Performance Measurement Data – Commercial Mail, June 25, 2012, at 3, 11, available at <https://www.uspsaig.gov/sites/default/files/document-library-files/2015/CRR-AR-12-005.pdf> (reviewing the actions of the Postal Service taken to address the issues identified in Report No. CRR-AR-11-003 and concluding that service performance measurement data for mail measured with Full Service Intelligent Mail barcodes (IMbs) were "generally reliable," based on audit conducted from July 2011 through June 2012); Docket No. PI2016-1, Order Enhancing Service Performance Reporting Requirements and Closing Docket, August 26, 2016, at 1-3 (Order No. 3490) (enhancing the reporting requirements imposed on the Postal Service in continuation of the Commission's monitoring of service performance and assessment of the accuracy, reliability, and representativeness of the underlying data).

⁴ See Order No. 4697 at 1-4, 66-67; Docket No. PI2019-1, Order Granting Request and Approving Use of Internal Service Performance Measurement System, July 1, 2020, at 1-2, 10-11 (Order No. 5576).

⁵ See Revised Service Standards for Market-Dominant Mail Products, 86 Fed. Reg. 43,941 (Aug. 11, 2021) (codified at 39 CFR part 121); see also Docket No. N2021-1, Advisory Opinion on Service Changes Associated with First-Class Mail and Periodicals, July 20, 2021 (Docket No. N2021-1 Advisory Opinion). The Postal Service also requested an advisory opinion

Commission explained that it intended to initiate a separate rulemaking proceeding to consider potential improvements to the existing service performance reporting requirements.⁶

Additionally, on April 6, 2022, the PSRA was signed into law. The PSRA imposed requirements on the Postal Service and the Commission that require consideration of changes to 39 CFR part 3055. Specifically, the PSRA directs the Postal Service to develop and maintain a publicly available online “dashboard” that provides weekly service performance data for Market Dominant products. See 39 U.S.C. 3692(c). It also mandates that the Commission provide reporting requirements for this Postal Service dashboard as well as “recommendations for any modifications to the Postal Service’s measurement systems necessary to measure and publish the performance information” located on the dashboard. 39 U.S.C. 3692(b). The PSRA also authorizes the Postal Service to provide certain nonpostal services to the public and other Governmental agencies and requires the Postal Service to periodically report the quality of service for these nonpostal services. See 39 U.S.C. 3703-3705.

In light of these developments, the Commission has initiated this docket in order to update the service performance reporting requirements codified in 39 CFR part 3055.

III. Invitation to Comment

from the Commission regarding revisions to service standards for a Competitive product, First-Class Package Service, but has not implemented the new standards yet. See Docket No. N2021-2, United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, June 17, 2021; see also Docket No. N2021-2, Advisory Opinion on the Service Standard Changes Associated with First-Class Package Service, September 29, 2021. Additionally, the Postal Service requested an advisory opinion from the Commission regarding changes to the service standards for two additional Competitive products, Retail Ground and Parcel Select Ground, which remain pending before the Commission. See Docket No. N2022-1, United States Postal Service’s Request for an Advisory Opinion on Changes in the Nature of Postal Services, March 21, 2022.

⁶ See Docket No. PI2021-3, Order Approving Modifications to Market Dominant Service Performance Measurement Systems and Closing Docket, September 28, 2021, at 8 (Order No. 5989).

Interested persons are invited to provide written comments to facilitate the Commission's examination of the service performance reporting requirements. The Commission seeks comments specifically on the usefulness and relevance of the potential new reporting requirements and the frequency of the Postal Service's obligation to provide such corresponding data. In making their comments, commenters are encouraged to provide specific language (so-called "redlines") for the new or amended regulations. If the Postal Service claims that a potential modification is particularly onerous, involves costly new data collection, or does not appear to add useful transparency, the Postal Service is requested to quantify its incremental cost or burden.

A. Modifications to 39 CFR part 3055, subparts A and B

In terms of the proposed changes to 39 CFR part 3055, subparts A and B, the Commission intends for the Postal Service to continue to provide on-time service percentage and variance data for each Market Dominant product. The Commission is seeking comment on the following specific potential new reporting requirements concerning its Market Dominant products.

First, the Commission is considering requiring the Postal Service to report the average actual calendar days to delivery for all Market Dominant products. This information is often provided by the Postal Service in communications that it submits directly to the public for certain types of mail—for example, via press releases and election reports.⁷ This type of information is useful in that it is easily

⁷ See, e.g., David Partenheimer, *USPS Highest Service Performance Scores Across All Mail Categories Since Pre-2021 Holiday Season*, United States Postal Service (April 1, 2022), available at <https://about.usps.com/newsroom/national-releases/2022/0401-usps-highest-service-performance-scores-across-all-mail-categories.htm> (reporting that "[a]verage mail delivery time across nation remains 2.7 days"); United States Postal Service, *2020 Post-Election Analysis: Delivering the Nation's Election Mail in an Extraordinary Year*, updated January 12, 2021, at 2, available at https://about.usps.com/newsroom/national-releases/2021/usps_postelectionanalysis_1-12-21_georgia.pdf (explaining that the Postal Service "delivered ballots to voters in 2.1 days" and "delivered ballots from voters to election officials in just 1.6 days").

understood by the public and presents a picture of the actual service being provided at any given time.

Second, the Commission intends to require the Postal Service to report root cause point impact data for all Market Dominant products.⁸ The term “point impact” refers to the amount (number of percentage points) by which on-time performance decreased due to a specific root cause of failure. These data are useful in isolating significant drivers of delay for an individual product and have been previously provided by the Postal Service as part of the Annual Compliance Review proceedings. See, e.g., FY 2021 ACD at 150.

Third, the Commission intends to require the Postal Service to report the performance for each national operating plan target (also referred to as the 24-Hour Clock national clearance goals) for all Market Dominant products. These data are useful in isolating bottlenecks in processing that are causing the most significant negative service impacts on each product and have been previously provided by the Postal Service as part of the Annual Compliance Review proceedings.⁹

Fourth, the Commission intends to create reporting requirements for the quality of service for all of the Postal Service’s nonpostal products, which it will set out in the previously reserved 39 CFR 3055.25. As explained above, the PSRA requires the Postal Service to submit to the Commission, no later than 90 days after the end of each year, a report that analyzes, among other things, the “quality of service for each agreement or substantially similar set of agreements

⁸ See, e.g., Docket No. ACR2021, *Annual Compliance Determination*, March 29, 2022, at 150 (FY 2021 ACD) (displaying point impact data for the top five root causes for the failure of 3-5-Day Single-Piece Letters/Postcards to be delivered on time in FY 2021). As part of this reporting requirement, the Commission intends for the Postal Service to inform the Commission whenever it changes its method of calculating point impact data.

⁹ See, e.g., FY 2021 ACD at 167 (requiring the Postal Service to report the performance of First-Class Mail products against 24-Hour Clock national clearance goals).

for the provision of property or nonpostal services” under methodologies prescribed by the Commission. 39 U.S.C. 3705(a)(1). By regulation, the Commission must prescribe the content and form of this report, giving due consideration to: a) providing the public with timely, adequate information; b) avoiding unnecessary burden to the Postal Service; and c) protecting confidentially sensitive commercial information. 39 U.S.C. 3705(b)(1). The Commission seeks comment on how best to effectuate these requirements by regulation.

Fifth, the Commission is considering requiring the Postal Service to regularly report: (a) mail excluded from measurement, disaggregated by reason(s) for exclusion; and (b) mail volumes measured and unmeasured by Full Service Intelligent Mail barcode (IMb). In Docket No. PI2016-1, the Commission invited public comment on issues related to the quality and completeness of service performance data measured by the Postal Service. Order No. 3490 at 1. In response, several commenters expressed concerns about the quantity and impact of mail excluded from Postal Service measurement. *See, e.g., id.* at 15-19. As a result, the Commission required the Postal Service to regularly report certain exclusion information, finding that this information would “enhance the quality and completeness of service performance data.” *Id.* at 24-25. The Commission invites comments on whether to codify those requirements and if so, whether any modifications to these requirements is warranted.

The Commission also seeks comment on how best to require the Postal Service to disaggregate service performance data for the aforementioned subjects. The Commission requires product-level data in order to analyze the quality of service as part of its Annual Compliance Determination. *See* 39 U.S.C. 3652(a)(2)(B)(i). In addition, data disaggregated below the product level should

align with the Postal Service's service standards in order to allow the Commission to monitor the Postal Service's level of achievement of its service performance targets.¹⁰ Therefore, the Commission invites comments on whether the reporting rules in 39 CFR part 3055, subpart B, should directly cross-reference the Postal Service's service standards, contained in 39 CFR 121.1 *et seq.*, thus obviating the need for the Commission to revise its regulations whenever the Postal Service amends its service standards. The Commission also invites comments on how best to align the reporting requirements geographically.

The Commission also plans to update the terminology used in its requirements where it has become outdated—for instance, with regard to class and product names and performance measurement systems. The Commission invites suggestions as to what specific terminology should be updated and how to do so.

B. Postal Service Online Dashboard

The Commission is also seeking comments on implementing the PSRA's new online dashboard mandate. As explained above, the PSRA requires that the Postal Service develop an online dashboard "that provides performance information for market-dominant products that is updated on a weekly basis." 39 U.S.C. 3692(c)(1). In regards to this Postal Service dashboard, the Commission shall provide "requirements for the Postal Service to publish nationwide, regional, and local delivery area performance information" that are consistent with the organizational structure of the Postal Service, "reflect the most granular geographic level of performance information appropriate for the Postal Service to

¹⁰ See, e.g., Order No. 465 at 10 ("Reporting on quality of service allows assessment of whether the Postal Service is meeting the objective of maintaining the 'high quality service standards established under section 3691'" (quoting 39 U.S.C. 3622(b)(3))).

publish,” and include “performance information for different time periods, including annual, quarterly, monthly, and weekly segments.” 39 U.S.C. 3692(b)(1), (c)(2). The Commission shall also provide “recommendations for any modifications to the Postal Service’s measurement systems necessary to measure and publish the performance information” for the Postal Service’s dashboard. 39 U.S.C. 3692(b)(2). With these statutory provisions in mind, the Commission invites comments on what specific data should be required of the Postal Service and any recommended corresponding revisions to the Postal Service’s measurement systems.

IV. Administrative Actions

The Regulatory Flexibility Act requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. See 5 U.S.C. 601 *et seq.* If the proposed or final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities, the head of the agency may certify that the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply. See 5 U.S.C. 605(b). In the context of this rulemaking, the Commission’s primary responsibility is regulatory oversight of the Postal Service. The rules that are the subject of this rulemaking have a regulatory impact on the Postal Service, but do not impose any regulatory obligation upon any other entity. Based on these findings, the Chairman of the Commission certifies that the rules that are the subject of this rulemaking will not have a significant economic impact on a substantial number of small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Comments are due no later than June 3, 2022. Reply comments are due no later than June 24, 2022. All comments and suggestions received will be available for review on the Commission's website, <https://www.prc.gov>.

Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2022-7 to consider revisions to the periodic reporting requirements.
2. Comments are due no later than June 3, 2022. Reply comments are due no later than June 24, 2022.
3. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.
4. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

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